



Asa Hutchinson  
Governor

# ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205  
agriculture.arkansas.gov  
(501) 225-1598



Wes Ward  
Secretary of Agriculture

October 5, 2022

Arkansas Legislative Council  
Administrative Rules Subcommittee  
Kim Hammer, Senate Chair  
Les Eaves, House Chair

ATTN:  
Rebecca Miller Rice  
Administrator, Administrative Rules Review Section  
Bureau of Legislative Research  
One Capitol Mall  
5<sup>th</sup> Floor, Room L-513  
Little Rock, AR 72201

RE: Delinquent Rulemaking under Act 517 of 2019 – Department of Agriculture, Bureau of Standards (Act 501)

Dear Co-chairs:

Act 501 of 2019 (the Act) requires the Director of the Bureau of Standards to promulgate rules for the labeling of certain food products that contain synthetic products derived from a plant, insect, or other source, or products grown in a laboratory from animal cells. The Act seeks to regulate the use of terms like “meat”, “pork”, or “poultry” on the labels of such products. The Act also provides for limitations on the use of the word “rice” on packaging of products that do not contain rice.

On July 22, 2019, just days before the Act was to become effective, a lawsuit was filed in federal court challenging the constitutionality of certain provisions of the Act. The specific provisions were

- Ark. Code Ann. § 2-1-305 (2), Selling agricultural products under the name of another food
- Ark. Code Ann. § 2-1-305 (5), Representing the product as a food for which standard of identity has been provided by regulation under Arkansas law or the Federal Food, Drug, and Cosmetic Act unless certain conditions are met
- Ark. Code Ann. § 2-1-305 (6), Representing the product as meat when the product is not derived from livestock, poultry, or cervids
- Ark. Code Ann. § 2-1-305 (8), Representing the product as beef when the product is not derived from domesticated bovine
- Ark. Code Ann. § 2-1-305 (9), Representing the product as pork when the product is not derived from swine, and
- Ark. Code Ann. § 2-1-305 (10), Utilizing a term that is the same as or similar to a term that has been used or defined historically in reference to a specific agricultural product.

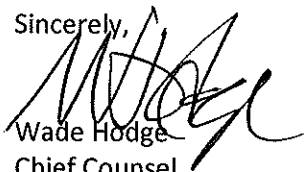
The provision in the Act that prohibits representing the product as rice when the product is not rice was not challenged.

Plaintiffs requested a preliminary injunction to enjoin enforcement of the Act pending litigation. The Court granted the Plaintiffs' motion for preliminary injunction on December 11, 2019. Therefore, enforcement of this Act was enjoined pending the outcome of the lawsuit. The matter was set for trial the week of February 8, 2021, however, the parties requested that the Court issue a decision based upon the evidence presented at the hearing for preliminary injunction. This allowed the Court to issue a decision without the necessity of a trial.

On September 29, 2022, the Court issued a 54-page opinion in which it declared the challenged provisions of the Act to be unconstitutional and issued a permanent injunction as to the enforcement of those provisions. Ark. Code Ann. § 2-1-305(10) was declared to be unconstitutional on its face, and the Department is enjoined from enforcing that provision statewide. The Department is permanently enjoined from enforcing the other challenged provisions, Ark. Code Ann. § 2-1-305(2), (5), (6), (8), & (9), as to the Plaintiffs in the lawsuit. The Court specifically found that those provisions do not advance the goal stated in the Act of protecting consumers from being misled or confused. The Attorney General does not recommend appealing the decision.

Additionally, during the 2019 General Session the General Assembly passed Act 741, which provides that the Department may promulgate rules "regarding the labeling of viticultural, livestock, and poultry products that are edible by humans, including without limitation, rice". Act 741 was not challenged in the lawsuit discussed in this letter. The Department is reviewing the Court's opinion and considering its options for rulemaking under both Act 501 and Act 741.

Sincerely,



Wade Hodge  
Chief Counsel

Arkansas Department of Agriculture